[JULY 8. 1745.]

INFORMATION for *Alexander Chryſtie* Merchant in *Montroſe*,

AGAINST

John Spence Truſtee for *Samuel Straiton* of *London*.

IN *July* laſt *Alexander Chryſtie* Merchant in *Montroſe* obtained Decreet before the Court of Seſſion, againſt *Samuel Straiton* Merchant in *London*, for 281 *L.* 15 *s.* 7 *d. Sterl.* He was at that very Time Creditor to the ſaid *Samuel Straiton* in a much larger Sum; but, as he was not then poſſeſt of the proper Vouchers of theſe other Articles, he reſtricted his Demand to the above mentioned Sum of 281 *L.* 15 *s.* 7 *d. Sterl.* and, as *Samuel Straiton* did not think proper to appear, Decreet went in Abſence.

Letters of Horning being raiſed upon this Decreet, Arreſtments were uſed in the Hands of certain Perſons here in *Scotland*, ſuppoſed to be Debitors to the ſaid *Samuel Straiton*, and a Proceſs of Forthcoming was thereupon brought, which now depends before the Lord *Elchies* Ordinary.

In order to prevent the Effect of theſe Arreſtments, *Samuel Straiton* drew Bills upon theſe his Debitors, ordering them, within a few Days after Sight, to pay to the foreſaid *John Spence* the ſeveral Sums in which they ſtood Debitors to him; and a Proceſs of Multiple-Poinding being by them raiſed, which of courſe was remitted to the Proceſs of Forthcoming, Compearance was made for the ſaid *Alexander Chryſtie*, who claimed to be preferred upon the Title of the foreſaid Arreſtments, and for the ſaid *John Spence*, as Poſſeſſor of the foreſaid Bills, who, as Aſſigny thereby conſtitute to the ſeveral Sums in the Hands of *Samuel Straiton*'s Debitors, pled to be preferred, notwithſtanding he acknowledged he was but a Name or Truſtee for *Samuel Straiton* himſelf.

The Competition therefore is not betwixt two of *Samuel Straiton*'s onerous Creditors, ſtruggling to recover their Payment by virtue of the Priority of their Rights or legal Diligences, but betwixt *Samuel Straiton* himſelf and the foreſaid *Alexander Chryſtie*, a moſt onerous Creditor, who has been treated in a cruel and treacherous Manner by *Straiton* the Bankrupt; in ſo much that, was the Point in Iſſue, Whether the ſaid *Samuel Straiton* ſhould be intitled to the Benefit of a *Ceſſio bonorum*, inſtead of the Queſtion that now occurs, touching the Effect of a Statute of Bankrupcy in *England*, it is humbly thought there are ſuch pregnant Qualifications of a fraudulent Bankrupcy, and of a deſigned Fraud againſt the ſaid *Alexander Chryſtie*, as would be a ſufficient Bar. And, to ſatisfy your Lordſhips that this is not a random Allegation, it ſhall ſuffice to obſerve, that recently before the Bankrupcy broke out, and whilſt he was *in meditatione* to take the Benefit of the Statute of Bankrupcy, he commiſſioned the ſaid *Alexander Chryſtie* to purchaſe for their joint Behoof, upon the Plan of their former Correſpondence, a large Parcel of Goods to be ſent up to *London*, there to be diſpoſed of by him for their joint Account; no ſooner did the Bill of Loading come into his Hands, by Courſe of the Poſt, than he raiſed a Sum of Money thereupon, by indorſing away the Bill of Loading before the Goods had come to Hand, and which did not arrive at *London* till after the Statute of Bankrupcy was awarded againſt him; by Means whereof, as the Indorſee to the Bill of Loading recovered the Goods, *Chryſtie* is not only cut out of his own Moiety of theſe Goods, but has alſo been obliged to pay *Straiton*'s Half of the Prime Coſt, and thus remains Creditor to *Straiton* in no leſs than the Sum of 65 *L. Sterling*, beſides all the Damages and Expences thereby incurred, over and above the Sums contained in the foreſaid Decreet; and, when Mr. *Chryſtie* complained to Mr. *Straiton* of this Treatment, all the Satisfaction he could obtain, was, That it was out of his Power to deliver up the Bills of Loading.

Chryſtie's Arreſtments are of Date prior to theſe Bills which were drawn by *Samuel Straiton*, or to the Intimation thereof by *Spence*; ſo that, in a Competition betwixt theſe two, even tho' *Spence* were an onerous Aſſigny, there is no Queſtion but *Chryſtie* would be preferable.

What gives Riſe to the preſent Queſtion, is, That a Commiſſion of Bankrupcy having been iſſued againſt the ſaid *Samuel Straiton*, and he having conformed to the Directions of the Statutes in that Behalf made, by ſeemingly ſurrendring his Effects, and ſubmitting to be examined by the Commiſſioners of Bankrupcy, a Certificate was iſſued by the Lord Chancellor of *England*, in virtue whereof the ſaid *Samuel Straiton* was no doubt intitled to all the Privileges and Benefits that ſuch Bankrupt is intitled to by the Laws and Statutes of *England*; and Mr. *Chryſtie* will fairly admit, that one of the Privileges to which a Bankrupt conforming himſelf to the Statutes in that Behalf made ſtands intitled by the Law of *England*, is, that the Bankrupt is thereby diſcharged of all Debts contracted before the Bankrupcy, where either the Creditors or the Debts themſelves can be regulated by the Law of *England*.

It

It is alſo an agreed Point, that the Debt now claimed by Mr. *Chryſtie*, as contained in the foreſaid Decreet, and upon which the Arreſtments are uſed, was contracted before this Commiſſion of Bankrupcy was awarded; and from thence the Queſtion does ariſe, Whether the Statutes of Bankrupcy in *England* are to have their full Effect over all the known World; Whether *Samuel Straiton*'s Creditors reſiding in foreign Countries were bound to enter their Claims, and to prove their Debts before the Commiſſioners of Bankrupcy in *England*; and, in Default of ſuch Claim, whether theſe Debts are ſo effectually diſcharged, as that they cannot be a Ground of Action in any other Country to which the ſaid *Samuel Straiton* may be ſubjected and bound to anſwer.

And as this is a Queſtion *juris gentium*, it muſt appear to your Lordſhips to be a Point of great Importance to the Subjects in this Country. Every Mortal knows what Frauds are daily committed, under the Colour of thoſe Commiſſions of Bankrupcy, in *England*. How eaſy it is for the Bankrupt to ſecrete his Effects, ſo that they cannot come to the Knowledge of Creditors in *Scotland*, and diſperſed in foreign Countries. The Time limited, by the Statutes of Bankrupcy in *England*, for the Creditors to compear and prove their Debts, is extremely ſhort; and therefore, whatever may be the Effect of the Law of *England*, with regard to Creditors ſubject to the Laws of *England*, or to the Chancellor of *England*'s Juriſdiction, by whoſe Authority theſe Commiſſions of Bankrupcy are iſſued, it is not eaſy to conceive upon what Principle of Law it can be maintained, that theſe Commiſſions of Bankrupcy ſhall have their full Effect againſt Creditors reſiding in foreign Parts, or proſecuting legal Diligences conform to the Laws of other Countries, eſpecially where (as in this Caſe) the Bankrupt is not only a Native of this Country, and thereby ſubjected to the Laws of *Scotland*, *ratione originis*, but the Debt itſelf actually contracted in *Scotland*, by Commiſſions which *Chryſtie* received to purchaſe Goods, from Time to Time, partly for *Straiton*'s Behoof, or by accepting Bills which *Straiton* drew upon him, to ſupport his Credit, when at the ſame Time he had none of *Straiton*'s Effects in his Hands.

Was Mr. *Chryſtie* to claim the Benefit of the Commiſſion of Bankrupcy in *England*, and, in conſequence thereof, to draw a Proportion of the Bankrupt's Effects, it behoved him undoubtedly to ſubmit to the Law of *England*, and, in conſequence thereof, to releaſe the Debt as to all other Intents and Purpoſes, beyond what Proportion he might thereby be intitled to draw of the Bankrupt's Effects, at the Time when the Commiſſion of Bankrupcy was awarded: But, where that is not the Caſe, as Mr. *Chryſtie* neither claims nor takes any Benefit from the Commiſſion of Bankrupcy in *England*; as he neither demands nor draws any Dividend of the Bankrupt's Effects, as diſcovered or ſurrendred to the Commiſſioners of Bankrupcy in *England*, he cannot, with all due Submiſſion, apprehend how either the Commiſſion or Bankrupcy, as founded upon the Lord Chancellor's Juriſdiction, or the Statutes of *England*, can reach him, a Native of *Scotland*, reſiding in foreign Parts, proſecuting Diligence conform to the Laws of the Land where he reſides, where he finds his Debitor's Effects, and to which the Bankrupt is bound to anſwer, if the Statute of Bankrupcy does not ſtand in the Way.

The Statutes of Bankrupcy in *England* can have no ſtronger Effect in *Scotland*, or other foreign Countries, than the Laws of *Scotland* would be intitled to in *England*. If a Bankrupt in *Scotland* ſhould apply for, and obtain the Benefit of a *Ceſſio bonorum*, which protects the Perſon, but not the Effects of the Bankrupt, tho' afterwards acquired, it is with Reaſon believed, that the *Engliſh* Creditors, finding the Perſon of their Debitor in *England*, would neither ſcruple, nor think themſelves bound up by the Laws of *Scotland*, from arreſting the Bankrupt's Perſon: And, if that is ſo, how can the Statutes of Bankrupcy in *England*, or Commiſſions of Bankrupcy awarded in conſequence thereof, prejudge the Diligence of Creditors in *Scotland*?

Laws derive their Force from the Authority of the Legiſlator, and therefore cannot be extended outwith the Limits of that Juriſdiction from the Authority of which they proceed. If a Creditor, wherever reſiding, voluntarily diſcharges a Debt, that Diſcharge, by the Laws of Nations, muſt be effectual all the World over; but, where ſuch Releaſe does not proceed from the Act of the Creditor, but from the peculiar Conſtitution and ſtatutory Law of any particular Country, it can have no Effect in foreign Countries, but in as far as the Creditor is ſubject to the Laws of that Country where ſuch Statute was enacted.

It is therefore moſt improperly ſaid, That a Certificate of this Kind, iſſued by the Lord Chancellor upon a Commiſſion of Bankrupcy, has in every Reſpect an equal Force and Effect with an Acquital or Diſcharge of the Bankrupt's Debts. It may ſo far be effectual, that Creditors ſubject to the Laws of *England* are thereby reſtricted to accept of ſuch a Share in the Dividend of the Bankrupt's Effects *in ſolutum* of their whole Demands, or the Bankrupt may be ſaid to be furniſhed with an Exception, whereby his Perſon and future Acquiſitions are exeemed from being farther attachable for Payment of Debts contracted before the Surrender. But, as theſe plainly depend

upon

upon the Authority of thoſe Statutes which communicate ſuch Privileges, they may have their Effect within the Country where ſuch Law obtains, but can never preponderate the Laws of any foreign Country. If Conceits of this Kind were to be gone into, it would not be an eaſy Matter to ſay by what Syſtem of Law the Subjects of *Scotland* were to be ruled.

As this Objection could not therefore be maintained upon any fixed and eſtabliſhed Principle of Law, a Go-by was attempted, under Pretence that the Debt due to *Alexander Chryſtie* was truly contracted in *England*: So that however Mr. *Chryſtie* the Creditor was himſelf a Foreigner, reſiding in *Scotland*, the *locus contractus* behoved to be the governing Rule in all Queſtions of this Kind; that Payment fell to have been made at *London*; that if Mr. *Chryſtie* had been to bring an Action againſt *Straiton* for Payment, ſuch Action muſt have been brought in *England*; and therefore that the Law of *England* muſt be an effectual Diſcharge of the Debt, in whatever Part of the World any ſuch Action ſhould be brought.

Mr. *Chryſtie* cannot agree to any one of thoſe Propoſitions, either in Point of Law or Fact. He inſiſts, in Point of Fact, that the Debt was contracted in *Scotland*, and conſequently that the Payment ought to have been made in *Scotland*; that *Samuel Straiton* was a Native of this Country, and of Conſequence ſubject to the Juriſdiction of the Courts here where his Effects were found. And, to ſatisfy your Lordſhips that ſuch truly is the Fact, Mr. *Chryſtie* ſhall only obſerve, as appears from the Documents produced in Proceſs, in obedience to the Lord Ordinary's Appointment, that this Sum of 281 *L.* 15 *s.* 7 *d. Sterl.* is the Balance of the Accompt current betwixt him and the ſaid *Samuel Straiton*, in conſequence of the Correſpondence betwixt them, and which Correſpondence was ſettled upon the following Plan.

Samuel Straiton commiſſioned, from Time to Time, large Parcels of Linen and Yarn from this Country, to be diſpoſed of at *London*, on his and Mr. *Chryſtie*'s joint Accompt, and as Mr. *Chryſtie* was employed to purchaſe in this Country the Goods ſo commiſſioned, he thereby became Creditor upon each Commiſſion for *Straiton*'s Half of the prime Coſt of theſe Goods, and in ſo far it cannot be diſputed that this Debt was contracted in *Scotland*. He alſo allowed Mr. *Straiton* to draw ſundry Bills upon him for conſiderable Sums, payable to different Perſons in this Country; ſo that Mr. *Chryſtie*'s Ground of Credit, conſiſted chiefly of the following three Articles: The prime Coſt of his Half of the Goods purchaſed here in *Scotland*, and Expences relative thereto. 2*dly*. The Bills drawn by *Straiton* upon him payable here in *Scotland*, when he had none of *Straiton*'s Effects in his Hands. And, 3*dly*. the Proceeds of Mr. *Chryſtie*'s Half of theſe Goods ſent to *London*, in ſo far as he was not reimburſed of theſe by Draughts or Remittances.

Upon the 7th of *July* 1743. an Accompt current was made out and docqueted by the ſaid *Samuel Straiton*, whereby there was an acknowledged Balance due to Mr. *Chryſtie* of 322 *L.* 12 *s.* 2 *d. Sterling*.

By another Accompt, *May* 10. 1744. docqueted by the ſaid *Samuel Straiton*, there was ſtill an acknowledged Balance of 273 *L.* 11 *s.* 2 *d.* and in this Accompt current *Samuel Straiton* debited himſelf, *inter alia*, with the following Articles.

	L.	*s.*	*d.*
Imprimis, By my (*i. e. Samuel Straiton*'s) Half of Linen *per Ballantine*,	81	13	6
Item, By *ditto per Beatie*, —— —— —— ——	98	19	8
Item, By Bill to *David Graham*, —— —— —— ——	105	–	–
Item, By my Half of Linen *per Arbuthnot*, —— ——	23	14	5
Item, By *ditto per Orkney*, —— —— —— ——	57	7	2

And as all theſe are over and above a farther Sum of 169 *L.* 8 *s.* 6 *d.* as the Balance of laſt Accompt, your Lordſhips will perceive that Mr. *Chriſtie* had advanced of his own Money here in *Scotland*, in purchaſing *Samuel Straiton*'s Half of the Goods commiſſioned, no leſs than 260 *L. Sterling*, beſides his having accepted and paid *Samuel Straiton*'s Bill upon him to *David Graham* for 105 *L.* when he had not one Farthing of *Samuel Straiton*'s Effects in his Hands, but was conſiderably in Advance. If theſe were not Debts properly contracted in *Scotland*, for which *Samuel Straiton* might be ſued, or his Effects attached in this Country, is humbly ſubmitted.

The acknowledged Balance due to Mr. *Chryſtie*, by this laſt mentioned current Accompt, docqueted by *Samuel Straiton* upon the 10th *May* 1744. conſiſting, *inter alia*, of the Particulars above mentioned, is no leſs than 278 *L.* 11 *s.* 3 *d. Sterling*, and which, by the Addition of a few other Arricles for ſmall Sums, was brought up to the 281 *L.* 15 *s.* 7 *d.* It is for this laſt mentioned Sum that Decreet was obtained; and, without repeating what is already ſaid, it is ſubmitted to your Lordſhips, if there is any Thing in the Nature of theſe Debts, whereby they ſhould be conſidered as Debts contracted in *England*, or to be regulated by the Laws of *England* touching the Effects of a Statute of Bankrupcy.

In reſpect whereof, &c.

ALEX. LOCKHART.